

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

*

v.

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Criminal No. ELH-19-0159

XAVIER LEE

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MOTION TO MODIFY RELEASE CONDITIONS

Comes now Mr. XAVIER LEE, by and through his undersigned counsel, James Wyda, Federal Public Defender for the District of Maryland and Michael S. Oppenheimer, Assistant Federal Public Defender, hereby moves this Honorable Court, to modify the current release conditions to remove Mr. Lee's curfew restriction and permit him to access the internet. In support of the motion, Mr. Lee states:

1) On March 15, 2019, Mr. Lee appeared before the Honorable A. David Copperthite charged by criminal complaint with use of interstate facilities to promote a business enterprise involving prostitution offenses, in violation of 18 U.S.C. § 1952(a)(3). Mr. Lee was released to home detention with 24/7 location monitoring supervised by the U.S. Pretrial Services Office (Pretrial). **ECF No. 9**. Further, Mr. Lee was restricted from "the use of computer systems, Internet- capable devices and or/similar electronic devices...without the prior written approval of" Pretrial. *Id.* at ¶ 8(u).

2) A bail review hearing, on undersigned counsel's Motion to Modify Conditions of Release, was held on April 23, 2019. After argument from the parties, the Court modified Mr. Lee's release conditions and placed him on curfew during which he would remain in the residence

from 8 p.m. – 7 a.m. **ECF No. 20**. Mr. Lee was also permitted to seek employment and conduct his personal business with approval of Pretrial and without leave of the Court. *Id.*

3) Undersigned counsel notes that while the Court's Order Modifying Conditions of Release of April 23, 2019, did not restrict Mr. Lee's access to the internet, the defense believes it was the Court's intention to continue such a restriction. *Id.* at ¶ 8(u)(omitting to select restriction). As a result, Mr. Lee has continued to abide by the restriction and now seeks to have the Court expressly grant him permission to access the internet.

4) Mr. Lee has been compliant with all requirements and restrictions of his release. Mr. Lee is 40-year-old man with no criminal history outside of traffic offenses. He has two children in college whom he helps financially support. Mr. Lee requests his release conditions be modified to remove the curfew and allow him to access the internet.

5) Removing the curfew and allowing Mr. Lee to have access to a smart phone would allow him to obtain employment with Uber or Lyft as driver during the evenings. Moreover, allowing him access to the internet would allow him to regain his real estate license by taking online courses during the day. This allowances will allow Mr. Lee to obtain gainful employment, subject to the approval of Pretrial, to support him and his family. There are no allegations of violence or coercion involved in the instant case, and Mr. Lee has been fully cooperative and compliant.

6) At the bail review hearing, the Court indicated it would be open to revisit the existing modified conditions subject to Mr. Lee's demonstrated compliance for another month.

Undersigned counsel has confirmed with the Government and Pretrial that Mr. Lee has been fully compliant with his release conditions for the previous two months since the hearing. Mr. Lee now requests the Court revisit and remove the requested restrictions on his release.

7) Undersigned counsel communicated this request to the Government and Pretrial, however, neither will consent to the requested modification at this time.

8) Mr. Lee respectfully asks that the Court exercise its discretion and remove the requested restrictions. Mr. Lee will continue to abide by all other conditions and directions of Pretrial. In the alternative, he requests the Court hold a hearing on this issue.

WHEREFORE, Mr. Lee requests that the Court grant the permission sought by this motion to modify the conditions of his release or grant him a hearing on the issue.

Respectfully submitted,

JAMES WYDA
Federal Public Defender
for the District of Maryland

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